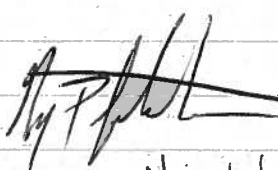
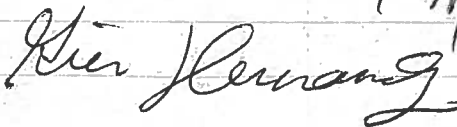


**Marine Life Protection Act Initiative  
Public Comments Submitted  
through October 6, 2010**

MLPA Initiative - Blue Ribbon Task Force  
c/o Ca Nat Resources Agency  
1416 9th St, Ste 1311  
Sacramento, CA 95814

I am a student at Humboldt State University, and I am majorly concerned about the loss of biodiversity that is occurring so rapidly and on such a planet wide scale that some scientists are calling it the Earth's 6th great extinction event. Species are currently estimated to be going extinct at nearly 1,000 times their normal rate. One of the places that is most highly impacted are the world's oceans. Marine life has been over fished and collected at such high rates that many fisheries have declined to ten percent of their original populations. Those most impacted are the larger members of the population, which are the best breeders. In addition, the most extensive fishing occurs during breeding seasons, further decimating future populations. Without ensuring protection to breeding populations, we could be facing worldwide extinctions of many of the fish that are most valuable as food and play many important roles in delicate ecosystems. If we do not take this opportunity to start protecting these breeding populations, it will be a great tragedy for all life. Thank you for taking the time to read this letter.

Sincerely  
Eric Leuter,   
Kier Hernandez,   
Humboldt State University  
Waste Reduction and Resource Awareness  
Program

**From:** matt mattison  
**Sent:** Friday, October 01, 2010 4:52 PM  
**To:** MLPAComments  
**Subject:** Unified Proposal comments

Dear Chair Gustafson,

I strongly urge the Blue Ribbon Task Force to accept the NCRSG unified proposal without changes. Any alterations to the proposal could undermine community support and the significant efforts made to reach consensus and compromise by the NCRSG.

Thank you,  
Matt Mattison  
Monte rio ca

My worst day diving is still better than my best day at work !  
When you enter the water you enter the food chain !

**From:** thaifurn@aol.com  
**Sent:** Sunday, October 03, 2010 4:21 PM  
**To:** MLPAComments  
**Subject:** Benefits from the Marine Protected Areas

Have studies been done demonstrating beneficial effects to the Caspar Marine Closures, and where are they available to copy? I doubt there is benefit to document the urchin barrens created, only some vague reference to urchin canopy expansion. The exclusion of sea urchin harvesting to these areas is a foolish miscalculation, only to have all the seaweeds mauled as soon as they appear by the starving urchins.....Mark Nicks

**From:** Pacific Quest Dive Center  
**Sent:** Sunday, October 03, 2010 5:06 PM  
**To:** MLPAComments  
**Subject:** NCRSG unified proposal without changes

Dear Chair Gustafson,

I strongly urge the Blue Ribbon Task Force to accept the NCRSG unified proposal without changes. Any alterations to the proposal could undermine community support and the significant efforts made to reach consensus and compromise by the NCRSG.

Thank you,  
Sincerely

Juan Santillan  
Pacific Quest Dive Center  
Crescent City, CA. 95531

From: FRED KNOLES  
Sent: Monday, October 04, 2010 9:42 AM  
To: MLPAComments  
Subject: MLPA

"Ms. Cindy Gustafson, Chair  
MLPA Blue Ribbon Task Force  
Marine Life Protection Act Initiative  
c/o California Resources Agency  
1416 Ninth Street, Suite 1311 Sacramento, CA 95814

Dear Chair Gustafson,

I strongly urge the Blue Ribbon Task Force to accept the NCRSG unified proposal without changes. Any alterations to the proposal could undermine community support and the significant efforts made to reach consensus and compromise by the NCRSG.

Thank you,  
Fred Knoles  
Carmichael, CA

**From:** Kathleen Bylsma  
**Sent:** Monday, October 04, 2010 8:46 AM  
**To:** MLPAComments  
**Subject:** Marine Life Protection Act Initiative

Ms. Cindy Gustafson, Chair  
MLPA Blue Ribbon Task Force  
Marine Life Protection Act Initiative  
c/o California Resources Agency  
1416 Ninth Street, Suite 1311 Sacramento, CA 95814

Dear Chair Gustafson,

I strongly urge the Blue Ribbon Task Force to accept the NCRSG unified proposal without changes. Any alterations to the proposal could undermine community support and the significant efforts made to reach consensus and compromise by the NCRSG.

Thank you,  
Kathleen Bylsma  
Mountain View, CA

## Agenda Title &amp; Agenda Report Packet Submittal Form

CM Approval: CM Approval: 

– Enter Your Title Information (Send this document electronically to CCO by title deadline)			
Meeting Body:	City Council		
Meeting Date:	Oct 5, 2010 - CC Regular Meeting		
Department:	Public Facilities		
Division:	PF-Harbor and Marina		
Author of Staff Report:	Stephen Scheiblaue, Harbormaster		
Title Submitted By:	Kim Bui-Burton, Community Services & Library Director		
Agenda Placement:	Consent-Resolutions		
Report Title: (see Packet schedules Regular meetings Study sessions)	Adoption of a Resolution Requesting the Marine Life Protection Act Initiative's Blue Ribbon Task Force and the California Fish and Game Commission Adopt the North Coast Regional Stakeholder Group's Marine Protected Area Array		
Series# (see schedule):			
Environmental / CEQA Review Information:			
Is this a project under CEQA as determined by Plans and Public Works?	No		
Project Status:	Exempt from CEQA Requirements		
Scheduling Information:			
Time sensitive:	Yes	Estimated Duration:	n/a - on consent
Special Instructions:			
Comments:			
Blue Ribbon Task Force Meeting On October 15, 2010			
– Specify Agenda Report Packet Materials (Submit this document as agenda report cover)			
Select one:	Agenda Report: <input checked="" type="checkbox"/>	Minutes: <input type="checkbox"/>	Proclamation: <input type="checkbox"/> Presentation: <input type="checkbox"/>
Resolutions (indicate number of resolutions included):	01		
Ordinances (indicate number of ordinances included):	None		
Legal Documents (indicate number of contracts, agreements included):	None		
Exhibits as part of Ordinances and Resolutions (indicate number included):	None		
Attachments as part of Agenda Report (indicate number included):	None		
Draft Letters for Mayor or City Manager signature:	None		
Approvals (Must be completed before submission to CCO/CMO):			
Department Director Review & Approval	Date Approved:	09/27/10	
City Attorney Review & Approval	Date Approved:	In Progress	
Finance Review & Approval	Date Approved:	In Progress	
Human Resources Review & Approval	Date Approved:		
Information Resources Review & Approval	Date Approved:		
Other Approval Name(s):	Date Approved:		
Date submitted to CCO (Entered only by CCO, not submitting department)	Date:		
Date revised report submitted to CCO (Entered only by CCO)	Date:		
Notification to Outside Parties & Request Copies of Agenda Reports:			
Submitting department will notify outside parties.	Yes		
Indicate the number of copies of the agenda report your division/dept needs	Qty:	1	

9/27/10

## **CITY OF MONTEREY**

**To:** City Manager  
**From:** Harbormaster  
**Date:** October 5, 2010  
**Subject:** Adoption of a Resolution Requesting the Marine Life Protection Act Initiative Blue Ribbon Task Force and the California Fish and Game Commission Adopt the North Coast Regional Stakeholder Group's Marine Protected Area Array Proposal

### **RECOMMENDATIONS:**

It is recommended that the City Council adopt the attached resolution supporting the work of the North Coast Regional Stakeholder Group.

### **POLICY IMPLICATIONS:**

This recommendation involves no change in policy.

### **FISCAL IMPLICATIONS:**

None.

### **ENVIRONMENTAL IMPACT:**

Not applicable.

### **ALTERNATIVES CONSIDERED:**

The City Council could elect not to adopt the attached resolution. However, this is not the staff recommendation.

### **DISCUSSION:**

The Marine Life Protection Act, passed in 1999, requires that the State adopt a network of Marine Protected Areas (MPA's). The implementation of this law is now occurring through an effort called the Marine Life Protection Act Initiative. As part of this implementation, a recommending body has been created called the "Blue Ribbon Task Force". These members are appointed by the California Resources Secretary and are not confirmed by the California


## DISCUSSION CONTINUED:

Senate, as opposed to other political appointments (i.e.: the Fish and Game Commissioners). For two regions of the State which have already implemented networks of MPAs, the proposals that have come out of the Regional Stakeholder Groups have been changed by the Blue Ribbon Task Force before they were forwarded to the Fish and Game Commission for final approval. These changes have been quite controversial and not appreciated by the agencies and stakeholders who developed these MPA network proposals.

Fort Bragg Mayor Doug Hammerstrom has brought to the League of California Cities the recommendation that coastal cities adopt a resolution similar to that attached for the Monterey City Council's review. This resolution would request of the Blue Ribbon Task Force and the California Fish and Game Commission that the recommendation for network protected areas that came out of the North Coast region not be changed. The North Coast region is unique among other regions of the State identified for implementation of the MLPAI, in as much as they reached an agreement on a single recommended network of MPAs. This contrasts with other regions that have had two or more different proposals come out of the Regional Stakeholder Group. The fact there is only one proposal underscores the integrity of that network and the fact that consensus was reached by wide range of diverse stakeholder interests.

The North Coast MLPA process does not directly affect the City of Monterey. By supporting the resolution, the City is showing support for North Coast communities. It is the staff recommendation that the City of Monterey join in adopting the attached resolution asking the Blue Ribbon Task Force and the Fish and Game Commission to respect the integrity of the Marine Protected Area network that has emerged from the North Coast MLPAL effort.

Written By:

  
Stephen Scheiblauber  
Harbormaster

Approved By:

  
Kim Bui-Burton  
Community Services & Library Director

SS/KBB/lp

C: **Marine Life Protection Act Initiative** c/o California Natural Resources Agency - 1416  
Ninth Street, Suite 1311 – Sacramento, CA – 95814  
California Fish & Game Commission - P.O. Box 944209 – Sacramento, CA – 95814

## RESOLUTION NO. 10 - \_\_\_\_\_

Adoption of a Resolution Requesting the Marine Life Protection Act Initiative Blue Ribbon Task Force and the California Fish and Game Commission Adopt the North Coast Regional Stakeholder Group's Marine Protected Area Array Proposal

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**WHEREAS**, the California Marine Life Protection Act (MLPA) calls for the reexamination and redesign of California's Marine Protected Area (MPA) system to increase its coherence and effectiveness at protecting the state's marine life, habitat, and ecosystems; and

**WHEREAS**, it is consistent with the MLPA and good public policy to redesign California's MPA system in a manner that gives meaningful consideration to the sustainability of ecological, economic, cultural, and social systems; and

**WHEREAS**, North Coast fisheries are currently sustainable or rebuilding under existing regulations; and

**WHEREAS**, recent scientific research has demonstrated that the California Current Ecosystem is one of the most conservatively managed ecosystems in the world; and

**WHEREAS**, Mendocino County, Humboldt County and Del Norte County are classified as vulnerable to changes in fisheries management measures due to factors such as high economic dependence on fishing, high community isolation, limited industry diversification, high unemployment, and high poverty rates; and

**WHEREAS**, the MLPA Initiative Regional Stakeholder Group unified during the MLPA Initiative process to develop a consensus-based MPA array that meets the goals of the MLPA while minimizing impacts to social, cultural, and economic systems; and

**WHEREAS**, due to significantly distinct ecological, social, cultural and economic conditions in the North Coast, the recommended Array does not precisely meet all the guidelines established by the MLPA Initiative Science Advisory Team, yet represents an MPA network consistent with the spirit of those guidelines and the goals and elements identified in the MLPA legislation; and

**WHEREAS**, the long term success of MPAs require acceptance by local communities; and the recommended MPA Array represents a compromise acceptable to North Coast residents, including recreational fishermen, commercial fishermen and conservation advocates; and

**WHEREAS**, California Indian Tribes and Tribal Communities are traditional and active stewards of marine ecosystems, and their continued gathering and use of marine resources is an ongoing and essential part of their culture and survival.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Monterey urge the Marine Life Protection Act Initiative Blue Ribbon Task Force and the California Fish and Game Commission to support and adopt the MPA Array developed by the Regional Stakeholder Group during the North Coast MLPA Initiative process.

**BE IT FURTHER RESOLVED THAT** if the Blue Ribbon Task Force decides to redesign the Unified MPA Array, contrary to the recommendation by the City of Monterey, then the redesign should be conducted in collaboration with the North Coast Regional Stakeholders Group. Collaboration with regional stakeholders and local communities regarding any change to the Unified MPA Array is essential to retaining both its integrity and the support of local communities, factors that are vital to the long term success of the MPA system.

**BE IT FURTHER RESOLVED THAT** any approved MPA array design will allow traditional, non-commercial, gathering, subsistence, harvesting, ceremonial and stewardship activities by California Tribes and Tribal Communities.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY** on the 5<sup>th</sup> day of October, 2010 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

ATTEST:

\_\_\_\_\_  
Chuck Della Sala  
Mayor of said City

\_\_\_\_\_  
Bonnie Gawf  
City Clerk thereof

RESOURCES AGENCY OF CALIFORNIA

OCT 05 2010

RECEIVED BY  
Office of the Secretary

**From:** Eric Lund  
**Sent:** Tuesday, October 05, 2010 10:54 AM  
**To:** MLPAComments  
**Subject:**

Ms. Cindy Gustafson, Chair  
MLPA Blue Ribbon Task Force  
Marine Life Protection Act Initiative  
c/o California Resources Agency  
1416 Ninth Street, Suite 1311 Sacramento, CA 95814

Dear Chair Gustafson,

I strongly urge the Blue Ribbon Task Force to accept the NCRSG unified proposal without changes. This proposal is the result of a great deal of time and work on the part of all those in the community involved. Any alterations to the proposal could undermine community support and the significant efforts made to reach consensus and compromise by the NCRSG.

Thank you,  
Eric Lund  
Arcata, CA

**From:** Jim Martin

**Sent:** Tuesday, October 05, 2010 10:57 AM

**To:** Bill Anderson; Jimmy Smith; Cindy Gustafson; Virginia Strom-Martin; Cathy Reheis Boyd; Roberta Cordero; Greg Shem

**Cc:** Melissa Miller-Henson; Ken Wiseman; Sonke Mastrup

**Subject:** FW: Judge rules MLPA officials must release public records

Dear MLPAI Blue Ribbon Task Force members,

You may have seen this, but I wanted to forward to you a recent court decision regarding your status as members of a state agency. The judge ruled that you are all subject to the requirements of the Bagley-Keene Act and other state laws regarding the public's right to know.

ROBERT C. FLETCHER v. BLUE RIBBON TASK FORCE OF THE MARINE LIFE PROTECTION ACT INITIATIVE; MARINE LIFE PROTECTION ACT MASTER PLAN TEAM, Case No. 2010 – 80000555:

The following shall constitute the Court's tentative ruling on the respondent's motion for judgment on the pleadings and on the petition for writ of mandate, simultaneously set for hearing in Department 19 on Friday, October 1, 2010. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the Clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the Clerk that such party has notified the other side of its intention to appear.

In the event that a hearing is requested, oral argument shall be limited to no more than 20 minutes per side.

Introduction

This is a petition for writ of mandate pursuant to Code of Civil Procedure section 1085 and Government Code section 6258, and a complaint for declaratory and injunctive relief, in which petitioner seeks an order requiring respondents to comply with requests for inspection of documents petitioner served on them under the California Public Records Act (Government Code sections 6250, et seq.).

The central issue in this case is whether the respondents are “state agencies” that are subject to the Public Records Act. Respondents contend that they are not, and have filed a motion for judgment on the pleadings and an opposition to the merits of the petition on that basis<sup>1</sup>.

Petitioner has filed a request for judicial notice of the following three items:

1. Memorandum of Understanding Among The California Resources Agency, The California Department of Fish and Game, and The Resources Legacy Foundation for The California Marine Life Protection Initiative, signed by the parties thereto in August, 2004;
2. Memorandum of Understanding Among The California Resources Agency, The California Department of Fish and Game, and The Resources Legacy Foundation for The California Marine Life Protection Act Initiative, Second Phase, signed by the parties thereto in December, 2006
3. Amendment and Extension of Memorandum of Understanding Among The California Resources Agency, The California Department of Fish and Game, and The Resources Legacy Fund Foundation for The California Marine Life Protection Initiative, signed by the parties thereto in July, 2008.

No objection has been made to the request by respondents. The Court finds that the matters contained in the request are proper subjects for judicial notice as official acts of agencies of the executive department of this State pursuant to Evidence Code section 452(c). Petitioner's request for judicial notice is therefore granted.

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<sup>1</sup> The motion for judgment on the pleadings and the petition for writ of mandate raise the same substantive issue, and the briefing for the two matters advances many of the same arguments and authorities. The Court has found it unnecessary to distinguish between the motion and the petition in analyzing this matter.

### Factual and Legal Background

The facts of this matter are not in dispute, and may be summarized based on the allegations of the petition, the matters judicially noticed, and applicable law.

In 1999, the Legislature enacted the Marine Life Protection Act, which was codified in Sections 2850-2863 of the Fish and Game Code. In the Act, the Legislature declared that there was a need to reexamine and redesign California's system of Marine Protected Areas ("MPAs") to increase its coherence and its effectiveness in protecting the state's marine life, habitat, and ecosystems.<sup>2</sup> To accomplish that goal, the Legislature directed the California Fish and Game Commission ("the Commission") to adopt a Marine Life Protection Program pursuant to Fish and Game Code section 2859.<sup>3</sup>

Fish and Game Code section 2855(a) requires the Commission to adopt a "master plan that guides the adoption and implementation of the Marine Life Protection Program...and decisions regarding the siting of new MPAs and major modifications of existing MPAs. The plan shall be based on the best readily available science."

As provided in Fish and Game Code section 2855(b)(1), the Department of Fish and Game ("the Department") is assigned the task of preparing the master plan, or causing it to be prepared by contract. The statute further provides: "In order to take full advantage of scientific expertise on MPAs, the department shall convene a master plan team to advise and assist in the preparation of the master plan, or hire a contractor with relevant expertise to assist in convening such a team."

Fish and Game Code section 2855(b)(3) requires the master plan team to be composed of the following individuals: Staff from the Department, the Department of Parks and Recreation, and the State Water Resources Control Board, to be designated by each of those departments; five to seven members who shall be scientists, one of whom may have expertise in the economics and culture of California coastal communities; and one member, appointed from a list prepared by Sea Grant marine advisers, who shall have direct expertise with ocean habitat and sea life in California marine waters.

Fish and Game Code section 2856 requires the "department and team" to use the best readily available scientific information in preparing the master plan, and sets forth the required components of the master plan.

Fish and Game Code section 2859 requires the Department to submit a draft of the master plan to the Commission, and then, after not less than three public meetings and appropriate modifications of the draft plan, to submit a proposed final master plan to the Commission for adoption (after at least two public hearings), along with a Marine Life Protection program with regulations based on the plan.

Thus, respondent Master Plan Team is an entity specifically established under the applicable statutes of the Fish and Game Code.

The genesis of respondent Blue Ribbon Task Force is somewhat different.

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<sup>2</sup> Fish and Game Code section 2853(a).

<sup>3</sup> Fish and Game Code section 2853(b). This subsection, and the following subsection (c), set forth the goals and elements of the program, which are not at issue here.

After the enactment of the Marine Life Protection Act in 1999, it became clear that the Department's limited financial resources rendered it unable to prepare a draft master plan within the time periods set forth in the statutes. As a result, the Department and the California Resources Agency (which supervises the Department), created the California Marine Life Protection Initiative in 2004. This was a program that was designed in part to obtain private funds to supplement the inadequate public funds provided for MLPA implementation through a "public-private" partnership.

That partnership came into being in August, 2004, when the Agency and the Department, on the one hand, entered into a Memorandum of Understanding ("the 2004 MOU") with the Resources Legacy Fund Foundation, a private nonprofit foundation, on the other. Under the 2004 MOU, the Foundation agreed to provide the funding necessary to support the Department's activities in what was described as the first phase of the preparation of the master plan.<sup>4</sup>

Specifically, the introductory recitals of the 2004 MOU stated:

"Based on its prior and ongoing efforts to prepare a draft Master Plan, the Department has determined that it will be most effective to prepare the Master Plan in phases. Specifically, the Department intends as part of the first phase to prepare a Master Plan Framework that will then be used to develop networks of MPAs within individual regions. As used herein, 'Master Plan Framework' means a document that addresses certain of the matters set forth in [Fish and Game Code] Sections 2853(c) and 2856(a)(2), as determined by the Task Force defined in Section II(A), below, at a programmatic level for the purpose of providing a framework for developing succeeding phases of the Master Plan."<sup>5</sup>

Section II(A) of the 2004 MOU states that the Secretary for the Agency "...will appoint unpaid advisors to a California MLPA Blue Ribbon Task Force...to oversee the preparation of the draft Master Plan Framework and the proposal for alternative networks of MPAs in an area along the central coast for the Department pursuant to the MLPA and this MOU. The Secretary will also charge the Task Force with: (i) preparing a comprehensive strategy for long-term funding of planning, management and enforcement of MPAs; (ii) developing a recommendation for improved coordination of the management of MPAs with federal agencies involved in ocean management; and (iii) selecting one of its members to serve as the liaison to the Central Coast Stakeholder Group..."<sup>6</sup>

The 2004 MOU further provided that the Task Force would be directly assisted by a staff of certain "key personnel", such as an Executive Director and an Operations and Communications Manager, to be retained by the Foundation upon the advice and concurrence of the chair of the Task Force<sup>7</sup>, and that the Department would assign other "key personnel" such as a Policy

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<sup>4</sup> This "public-private partnership" was challenged in court by a nonprofit organization representing recreational fishermen and one of its members, who claimed that the MOU was not authorized by the MLPA; and that it was improperly devised by the Agency and the Department to "appropriate" money in a manner other than that prescribed by the California Constitution and thereby violated the doctrine of separation of powers. The First District Court of Appeal subsequently issued an opinion upholding the MOU against that challenge. (See, *Coastside Fishing Club v. California Resources Agency* (2008) 158 Cal. App. 4<sup>th</sup> 1183.) Some of the factual background in this ruling is drawn from that opinion.

<sup>5</sup> See, petitioner's Request for Judicial Notice, Exhibit 1, page 2, paragraph G.

<sup>6</sup> See, petitioner's Request for Judicial Notice, Exhibit 1, page 3.

<sup>7</sup> See, petitioner's Request for Judicial Notice, Exhibit 1, page 3, paragraph II.B.

Advisor and a Statewide Technical Advisor, all of whom would be employees of the Department.<sup>8</sup>

The Task Force staff and Department personnel assigned to the MLPA Initiative pursuant to the 2004 MOU would be referred to as a “Steering Committee”, which would be responsible for coordinating the work necessary to achieve the objectives of the Initiative.<sup>9</sup>

Specifically, the 2004 MOU provided that the Agency agreed to do the following:

“i. The Secretary will appoint seven to ten members of the Task Force, including the chair of the Task Force...who shall serve at the pleasure of the Secretary for a term no longer than the period from September 1, 2004 through December 31, 2006.

“ii. The Secretary will convene the Task Force and charge its members with undertaking the responsibilities set forth in Section II(A) above, to accomplish the objectives of this MOU as provided in Section I and as further described in Exhibit A.”<sup>10</sup>

The 2004 MOU also required the Department to do the following:

“(i) The Department will use best efforts to recruit, hire, dedicate and fund qualified staff for 5.0 [full time equivalent] managerial, scientific, technical and legal personnel for the Department’s Marine Region. These persons will be employees of the Department. Among their other duties, these personnel will assist the Task Force in preparing the draft Master Plan Framework and proposed alternative networks of MPAs in an area along the central coast, as well as providing policy, technical and legal review of the draft Master Plan Framework and all related planning and environmental documents. These personnel will serve as liaison between the Director of the Department and the Task Force and will also present a draft Master Plan Framework and proposed alternative networks of MPAs in an area along the central coast to the Commission consistent with the MLPA. These staff persons will report to the Department, and the Department will be responsible for management and oversight of their work.

“(ii) The Department will receive from the Task Force the draft Master Plan Framework and proposal for alternative networks of MPAs in an area along the central coast. Consistent with the MLPA, the Department will independently review and make any amendments or modifications to the draft documents that it determines appropriate. After review and revision of the draft documents, the Department will submit to the Commission for its review and consideration the revised drafts as the Department’s Master Plan Framework and proposal for alternative networks of MPAs in an area along the central coast.”<sup>11</sup>

The 2004 MOU also addressed the composition of the Master Plan Team, providing that “[t]he Director of Fish and Game...will expand the membership of the Master Plan Team, as described in [Fish and Game Code] Section 2855(b)(3), by up to eight additional scientists and re-

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<sup>8</sup> See, petitioner’s Request for Judicial Notice, Exhibit 1, page 3, paragraph II.C.

<sup>9</sup> See, petitioner’s Request for Judicial Notice, Exhibit 1, page 3, paragraph II.D.

<sup>10</sup> See, petitioner’s Request for Judicial Notice, Exhibit 1, page 4, paragraph III.A. Subparagraphs (iii) and (iv) require the Agency to dedicate a qualified .25 full-time equivalent senior policy level staff person to provide advice to the Task Force and its Executive Director and to serve as a liaison between the Agency and the Task Force, and to provide office space, telecommunications equipment and support and general clerical support necessary to support the Agency’s commitments under the MOU.

<sup>11</sup> See, petitioner’s Request for Judicial Notice, Exhibit 1, pages 4-5, paragraph III.B.

establish it as the Master Plan Science Advisory Team ('Science Team'). The Science Team will advise and assist the Task Force and its staff in the preparation of the draft Master Plan Framework and proposed alternative networks of MPAs in an area along the central coast, pursuant to Section 2855(b), by providing scientific and technical support."<sup>12</sup> The members of the Science Team serve at the pleasure of the Director of the Department.<sup>13</sup>

Section IV of the 2004 MOU provides for "Transparency", as follows:

"The Parties agree and intend that the process used to achieve the objectives of this MOU will be transparent to the public. As used herein, 'transparent' means that (i) the Task Force will convene in publicly-noticed and open meetings whenever a majority of the members is scheduled to be present, (ii) the Science Team will convene in publicly-noticed and open meetings whenever a majority of the members is scheduled to be present, (iii) the Task Force and Science Team will provide regular opportunities for stakeholder and public input, and (iv) final work products developed pursuant to this MOU by the Task Force and the Science Team, and the Funding Description provided by the Foundation, will be made available to the public."<sup>14</sup>

In December, 2006, the Agency, the Department, and the Foundation entered into a second MOU, effective January 1, 2007 ("the 2007 MOU"), to fund and implement the second phase of the MLPA Initiative and, in particular, to "...set out a publicly transparent, science-based process for the development of siting recommendations for the second phase of the MLPA process".<sup>15</sup>

The provisions of the 2007 MOU are generally similar to those of the 2004 MOU with regard to the Blue Ribbon Task Force and the Science Advisory Team. Notably, the 2007 MOU includes one new provision regarding the Department's responsibilities:

"The Department will participate fully in the deliberations of the Blue Ribbon Task Force, Science Advisory Team and Regional Stakeholders Group to afford those bodies access to the Department's expertise and perspective in the development of alternative MPA proposals. The Department will provide to the Task Force, Science Advisory Team and Regional Stakeholders Group specific information on the Department's analysis and concerns regarding alternative MPA proposals during the second phase of the MLPA process."<sup>16</sup>

The 2007 MOU continues to provide that the Task Force and Science Team shall convene in public and open meetings whenever a majority of the members is scheduled to be present, that those bodies will provide regular opportunities for stakeholder and public input, and that their final work products will be made available to the public.<sup>17</sup>

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<sup>12</sup> See, petitioner's Request for Judicial Notice, Exhibit 1, page 4, paragraph II.E. In accordance with its original description in the applicable statutes, the Court will use the term "master plan team" to apply to the enlarged Science Team.

<sup>13</sup> See, petitioner's Request for Judicial Notice, Exhibit 1, page 5, paragraph III.B.iv.

<sup>14</sup> See, petitioner's Request for Judicial Notice, Exhibit 1, page 7.

<sup>15</sup> See, petitioner's Request for Judicial Notice, Exhibit 2, page 1, paragraph 1.2. Paragraph 1.5 of the "Objectives" section, and paragraph 2.7 of the "Recitals" section of the 2007 MOU, also declare that the process is to be "transparent" to the public.

<sup>16</sup> See, petitioner's Request for Judicial Notice, Exhibit 2, page 5, paragraph 3.8.

<sup>17</sup> See, petitioner's Request for Judicial Notice, Exhibit 2, pages 7-8, paragraphs 3.22-3.25. The 2007 MOU was amended and extended by a written agreement in July, 2008. The amendments are not related to the status, composition or activities of the Blue Ribbon Task Force or the Master Plan Science Advisory Team.

### Petitioner's Public Records Act Requests

On February 19, 2010, petitioner sent a written request to the "MLPA Initiative – Blue Ribbon Task Force", requesting copies of 41 categories of documents pursuant to the Public Records Act.<sup>18</sup>

On the same date, petitioner sent the same request to the "MLPA Initiative – Science Advisory Team and Master Plan Team".<sup>19</sup>

Also on the same date, petitioner sent the same requests to the Agency, the Department, and the Commission.<sup>20</sup>

Pursuant to Government Code section 6253, recipients of Public Records Act requests generally are required to respond within 10 days of receipt of the request.

Petitioner has received responses to the requests sent to the Agency, the Department, and the Commission.<sup>21</sup> As of the date of filing the petition, which was on May 28, 2010, petitioner had not received any response from the Blue Ribbon Task Force or the Master Plan Team.<sup>22</sup> It is undisputed that petitioner has not received any response from those entities since the filing of the petition. As noted above, those entities have filed a motion for judgment on the pleadings, and an opposition to the petition, contending that they are not required to respond because they are not "state agencies" within the meaning of the Public Records Act.

### Analysis

California law establishes a fundamental and very strong policy in favor of public access to governmental records. Article I, Section 3(b) of the California Constitution, enacted through Proposition 59 in 2004, states:

"(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

"(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

The Public Records Act, which predates this Constitutional provision, was enacted in this spirit. Government Code section 6250 provides:

"In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

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<sup>18</sup> See, Verified Petition and Complaint, paragraph 8 and Exhibit A.

<sup>19</sup> See, Verified Petition and Complaint, paragraph 9 and Exhibit B.

<sup>20</sup> See, Verified Petition and Complaint, paragraph 10 and Exhibits C, D, and E.

<sup>21</sup> See, Verified Petition and Complaint, paragraphs 12-13 and Exhibits F and G. Petitioner does not make any claim in this proceeding regarding the responses of the Agency, the Department, or the Commission.

<sup>22</sup> See, Verified Petition and Complaint, paragraph 18.

Government Code section 6253(a) states the general rule that public records are open to inspection at all times during the office hours of the state and local agency, and every person has the right to inspect any public records, unless such records are made exempt from disclosure by express provisions of law.

The term “public records” is defined in Government Code section 6252(e) as any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics.

Here, the documents petitioner sought in its PRA requests directed to respondents Blue Ribbon Task Force and the Master Plan Team unquestionably relate to the conduct of the public’s business, specifically, the development of “...the master plan that guides the adoption and implementation of the Marine Life Protection Program...and decisions regarding the siting of new MPAs and major modifications of existing MPAs” under the Marine Life Protection Act. (Fish and Game Code section 2855(a).) Respondents do not contend otherwise; indeed, the relationship of the requested documents to the “conduct of the public’s business” is demonstrated by the fact that the Commission, the Agency, and the Department have responded to identical requests and have stated that they will produce all documents within the scope of the request that were not privileged or exempt from disclosure under the Public Records Act.<sup>23</sup>

Nevertheless, respondents Blue Ribbon Task Force and the Master Plan Team contend that records in their possession or control, even if possibly identical in nature to the records being produced by the Commission, the Agency, and the Department, are not “public records” because the Blue Ribbon Task Force and the Master Plan Team are not “state agencies” within the meaning of the Public Records Act.

Government Code section 6252(f) defines a “state agency” as “...every state office, officer, department, division, bureau, board and commission or other state body or agency, except those agencies provided for in Article IV (except section 20 thereof) or Article VI of the California Constitution”.<sup>24</sup>

Only one reported California appellate decision provides guidance on the question of whether respondents fall within this statutory definition. In *California State University, Fresno Association, Inc. v. Superior Court* (2001) 90 Cal. App. 4<sup>th</sup> 810, the Fifth District Court of Appeal held that a university auxiliary organization that operated a university’s commercial enterprises, including its bookstore, food services, housing and student union, was a non-governmental organization that was not a “state agency” or “state body” within the meaning of the Public Records Act. Applying the “plain meaning rule” of statutory construction to Government Code section 6252, the Court stated: “The words ‘state body’ and ‘state agency’ simply do not include a nongovernmental organization.”<sup>25</sup> This decision indicates that whether a particular entity qualifies as a “state agency” or “state body” under the Public Records Act depends upon whether

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<sup>23</sup> See, Declaration of Adrianna Shea, Executive Director of the Commission, paragraphs 2-3; Declaration of Joseph Milton, Senior Staff Counsel to the Department, paragraphs 3-10; Declaration of Heather Baugh, Assistant General Counsel to the Agency, paragraphs 3-12. Respondents Blue Ribbon Task Force and Master Plan Team submitted these declarations in opposition to the petition. Although it appears from the declarations that the Commission, the Agency and the Department have asserted various privileges and exemptions under the Public Records Act as grounds for withholding certain documents from production, the validity of those claims of privilege or exemption are not before the Court in this proceeding.

<sup>24</sup> Respondents do not contend that they are agencies provided for in Articles IV or VI of the California Constitution.

<sup>25</sup> *California State University, Fresno Association, Inc. v. Superior Court* (2001) 90 Cal. App. 4<sup>th</sup> 810, 829.

that entity is a governmental organization, i.e., an organization performing governmental functions.

In this case, the Court concludes, based on the detailed summary of the MLPA and the MOUs set forth above, that both the Blue Ribbon Task Force and the Master Plan Team are performing governmental functions, specifically, the development of the master plan for the Marine Life Protection Program that is to be established by official administrative action, including rulemaking, pursuant to state statute. Implementation of the broad dictates of a statute through the development of plans that will be used as the basis for formal rule-making is a classic function of a state administrative agency, and not a non-governmental private body.

Moreover, the Blue Ribbon Task Force and the Master Plan Team, as entities, do not appear to be “private” entities, or bodies that are independent from state government in any real sense. Indeed, they are creations of law and of the actions of state agencies pursuant to such law: the Department convened the Master Plan Team, appointed its members and gave them their charge, while the Secretary of the Agency appointed the Members of the Blue Ribbon Task Force and gave them their charge. Both entities are completely under the control of state agencies in that their members serve at the pleasure of the appointing powers, the Department and the Agency. The Master Plan Team, by statute, includes state employees among its members, and both bodies are supported by staff provided by state agencies.<sup>26</sup> Both entities use an address at the offices of the California Natural Resources Agency, which where petitioner sent his Public Records Act Request.<sup>27</sup> The Department is to participate “fully” in the deliberations of both entities. The Blue Ribbon Task Force and the Master Plan Team thus function, as a matter of fact, as components of the state administrative structure for the purpose of implementing the MLPA. Based on the facts present here, they cannot be characterized as private contractors or consultants or truly independent advisory bodies, but are “state bodies” engaged in state governmental functions.<sup>28</sup>

In addition, both entities are required to operate through a “transparent” process, which includes publicly-noticed and open meetings and the public’s right to have access to their final work product. This process is virtually identical to the requirement of “transparency” generally applicable to state agencies through laws such as the Bagley-Keene Act and the Public Records Act, not to mention the formal rulemaking provisions of the Administrative Procedures Act.

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<sup>26</sup> Although the statutes and the MOUs call for the appointment of “scientists” to both bodies, who apparently could, but need not, be private individuals (that is, scientists who are not state employees), no evidence has been presented to the Court regarding the actual makeup of either body. Thus, respondents’ statement that members of the Blue Ribbon Task Force are “private citizen volunteers”, and that members of the Master Plan Team are (with three exceptions) “not state employees”, while evidently not disputed by petitioner, is not supported by any evidence. (See, Respondents’ Points and Authorities in Opposition to Petition for Writ of Mandate, page 1:12-15.) However, even if the evidence demonstrated that some or all members of either or both bodies were private individuals, the Court’s conclusion would not be different, given the function those bodies perform and the fact that they are controlled by the Agency and the Department, which are state agencies.

<sup>27</sup> According to paragraph 17 of the Verified Petition and Complaint, this address is displayed on the MLPA Initiative Web site. Respondents admit this factual allegation of the petition in paragraph 17 of their Answer.

<sup>28</sup> Although respondent refers to the Agency Secretary’s authority, under Government Code section 12851, to appoint “advisory and technical committees” to assist in the Agency’s work, nothing in that statute suggests that such committees would not be public agencies. Interestingly, the Blue Ribbon Task Force and the Master Plan Team are represented in this action by the Attorney General, who typically represents state agencies in litigation.

Finally, in *Coastside Fishing Club v. California Resources Agency*, *supra*, 158 Cal. App. 4<sup>th</sup> 1183, 1193-1194, the Court held that the Agency's appointment of the Blue Ribbon Task Force, and the Department's appointment of the Master Plan Team, as well as the activities of all of those agencies and bodies in the development of the master plan under the MLPA, provided consideration for the Foundation's promises in the MOU, such that the private funds the Foundation promised to and did provide to the Agency and the Department pursuant to the MOU were not a gift to the State requiring approval by the Director of Finance. This holding strongly suggests that the activities of the Blue Ribbon Task Force and the Master Plan Team are appropriately viewed as activities of the state, and not those of private parties.

The Court therefore concludes that the Blue Ribbon Task Force and the Master Plan Team are "state agencies" within the meaning of the Public Records Act. As such, they had a duty to respond to petitioner's Public Records Act requests. Respondents' motion for judgment on the pleadings, which rests entirely on the contention that respondents are not "state agencies", is denied. Since it is clear that respondents have failed to respond to petitioner's requests, a writ should issue to require them to respond.

Respondents contend that a writ should not issue because requiring the Blue Ribbon Task Force or the Master Plan team to make records available for inspection would violate the privacy rights of their members who are not state employees, by subjecting them to a search of their personal documents and files.<sup>29</sup>

Even assuming that both bodies have members who are private individuals and not state employees<sup>30</sup>, this contention is not persuasive. In Government Code section 6252, the Public Records Act defines a "public record" as one prepared, owned, used or retained by the "state agency". Government Code section 6253 makes it clear that state agencies are required to give the public access to records maintained in their "offices", which are defined as including "field facilities or other establishments that are separate from the office processing the request." These provisions of law indicate that a Public Records Act request made to a state agency reaches the records the agency maintains, as an agency, in its offices or other facilities, and does not extend to documents that are privately in the possession of individuals who work for the agency. In this case, both bodies evidently maintain an office or facility, at least for the purpose of receiving communications from the public, at the address of the California Natural Resources Agency. Petitioners' Public Records Act requests would reach records kept at that location, or at any other office or place of business at which the Blue Ribbon Task Force or the Master Plan Team, as entities, maintain records.

Respondents also contend that they are not subject to the Public Records Act because all of their work with regard to the Marine Life Protection Initiative is "pre-decisional", i.e., in advance of the formal rule-making process, which renders all records related to that work not subject to disclosure. In effect, respondents contend that they are not obligated to respond to petitioner's Public Records Act request because any records they maintain would be exempt from disclosure pursuant to the so-called "deliberative process privilege".

The Court finds this contention to be unpersuasive for two reasons.

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<sup>29</sup> See, e.g., respondents' Reply in Support of Motion for Judgment on the Pleadings, p. 4:14-17.

<sup>30</sup> See, footnote 26, above.

First, the fact that respondents may engage in “pre-decisional” activities with regard to the ultimate formal rule-making process has no bearing on whether they are or are not “state agencies” within the scope of the Public Records Act. Obviously, state agencies themselves engage in “pre-decisional” activities with regard to formal rule-making, and are nonetheless state agencies when they do so.

Second, a review of the general principles applicable to the deliberative process privilege, drawn from the Public Records Act and from case law interpreting and applying the Act, demonstrates that a blanket assertion of the deliberative process privilege may not be used to justify a complete failure to respond to a request under the Act.

In addition to providing exemptions from disclosure for a number of specific categories of documents, the PRA provides a more general exemption in Government Code section 6255(a): “The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

California appellate court decisions interpreting and applying the Public Records Act have described this as a “catchall exemption”, under which the court must engage in a case-by-case balancing process, with the burden of proof on the proponent of nondisclosure to demonstrate a clear overbalance on the side of confidentiality. (See, *Michaelis, Montamari & Johnson v. Superior Court* (2006) 38 Cal. 4<sup>th</sup> 1065, 1071.) As an exemption from the normal rule of disclosure under the Public Records Act, this provision must be narrowly construed. (See, *Citizens for a Better Environment v. Dept. of Food and Agriculture* (1985) 171 Cal. App. 3<sup>rd</sup> 704, 711; California Constitution, Article I, Section 3(b).)

Moreover, under Government Code section 6255(b), any denial of a request on the basis that records are exempt from disclosure must be made by means of a “response...in writing”.

California appellate court decisions have found that Section 6255(a) embodies the deliberative process privilege by protecting materials from disclosure which reflect the deliberative or decision-making processes of a governmental agency. In analyzing whether agency records are protected by this privilege, the critical question is whether disclosure of the records would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine its ability to perform its functions. (See, *Wilson v. Superior Court* (1996) 51 Cal. App. 4<sup>th</sup> 1136, 1142.)

The deliberative process privilege recognizes that agency decision-making can be impaired, or “chilled”, by exposure to public scrutiny, on the basis that agency decision-makers require a free flow of information and candid opinions before making a final determination, and that “...those who expect public dissemination of their remarks may well temper candor with a concern for appearance...”. (See, *California First Amendment Coalition v. Superior Court* (1998) 67 Cal. App. 4<sup>th</sup> 159, 171, 174.)

In applying the deliberative process privilege to the facts of a particular case, the courts have typically made a distinction between records containing purely factual matters, which may be subject to disclosure, and records that contain opinion, analysis or recommendations, which are considered to be truly deliberative and thus not subject to disclosure. At the same time, courts have acknowledged that this distinction sometimes may be misleading, and have declined to apply it in a mechanical manner. Thus, even material that may be characterized as purely factual

may be exempt from disclosure where disclosure would expose the deliberative process by revealing what information the decision-maker considered to be significant. (See, *Times Mirror Co. v. Superior Court* (1991) 53 Cal. 3<sup>rd</sup> 1325, 1342: “Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated, or inextricably intertwined with policy-making processes.”)

Also, as a general matter courts have drawn a distinction between records of pre-decisional communications, which are subject to the deliberative process privilege, and communications made after the decision and designed to explain it, which are not. (See, *Wilson v. Superior Court, supra*, 51 Cal. App. 4<sup>th</sup> at 1142.)

Recognizing that exempt and non-exempt material may be found within the same record, the Public Records Act, in Government Code section 6253(a), provides that: “Any reasonably segregable portion of a record shall be available for inspection by any person requesting the records after deletion of the portions that are exempted by law.” Segregation of exempt from non-exempt material is not possible, however, where the two are “inextricably intertwined”. (See, *State Board of Equalization v. Superior Court* (1992) 10 Cal. App. 4<sup>th</sup> 1177, 1187.)

Even where the court concludes that records sought to be disclosed through a Public Records Act request implicate the deliberative process, it still must engage in the weighing process to determine whether the interest in non-disclosure “clearly outweighs” the public interest in disclosure, as provided in Government Code section 6255. (See, *Times Mirror Co. v. Superior Court, supra*, 53 Cal. 3<sup>rd</sup> at 1344.) In this weighing process, the public interest in disclosure is not to be discounted. As one court stated: “If the records sought pertain to the conduct of the people’s business, there is a public interest in disclosure. The weight of that interest is proportionate to the gravity of the governmental tasks sought to be illuminated...”. (See, *Citizens for a Better Environment v. Dept. of Food and Agriculture, supra*, 171 Cal. App. 3<sup>rd</sup> at 715.)

The case-by-case weighing process the court must engage in when deciding whether the deliberative process privilege should bar disclosure of certain public records may require an *in camera* inspection of the records pursuant to Government Code section 6259(a).

The foregoing summary of the law regarding the deliberative process privilege demonstrates, as an initial matter, that a party relying on the privilege may not simply refuse or fail to respond to a Public Records Act request, because the applicable statutes require a written response. Beyond that, the nature of the analysis the court must engage in when analyzing claims of deliberative process privilege is such that a mere blanket assertion that an agency’s records are “pre-decisional” most likely would be overbroad and thus could not validate a refusal or failure to respond on the theory that the public would not be entitled to have access to the records anyway.

The Court further notes that respondents’ evident contention that all of their records are exempt from disclosure under the deliberative process privilege, because they are engaged in “pre-decisional” activities, is called into question by the fact that the Agency, the Department and the Commission, which received identical Public Records Act requests and are also engaged in “pre-decisional” activities with regard to the ultimate MLPA rule-making process, have not asserted the privilege as justifying complete non-disclosure of their records.<sup>31</sup>

The Court therefore concludes that the fact that some, or many, of the records maintained by respondents potentially may relate to “pre-decisional” activities with regard to the ultimate

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<sup>31</sup> See, declarations cited in footnote 22, above.

MLPA rule-making process is not sufficient to prevent a writ from issuing to require respondents to respond to petitioners' Public Records Act requests.

The motion for judgment on the pleadings is denied, and the petition for writ of mandate is granted. A writ of mandate shall issue requiring respondents to respond to petitioner's Public Records Act requests within ten days of the service of the writ on them, in accordance with the normal time for a response pursuant to Government Code section 6253(c).<sup>32</sup>

Because respondents have not responded to petitioner's requests, this ruling does not address, or make any findings regarding, the potential applicability, to any particular records or class of records, of any exemptions from disclosure provided by the Public Records Act or other applicable law, other than to find that respondents' general assertion that they are engaged in "pre-decisional" activities does not provide support for their non-response.

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In the event that this tentative ruling becomes the final ruling of the Court, the Court will confirm the final ruling by minute order, and counsel for petitioner is directed to prepare the order, judgment and writ of mandate according to the procedure set forth in Rule of Court 3.1312.

<sup>32</sup> Having granted the petition for writ of mandate, the Court finds that a further grant of declaratory or injunctive relief in petitioner's favor would be redundant.

**From:** City of Point Arena

**Sent:** Wednesday, October 06, 2010 9:56 AM

**To:** MLPAComments

**Cc:** Allan Jacobs

**Subject:** Resolution of Support for the 3rd Round Unified MPA Array

Please find attached a Resolution of Support for the 3rd Round Unified MPA Array passed by the City Council of the City of Point Arena on October 1, 2010.

Claudia Hillary

City Clerk/Administrator

City of Point Arena



## RESOLUTION NO. 2010-13 Resolution of Support for the 3rd Round Unified MPA Array October 1, 2010

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**WHEREAS**, the City of Point Arena recognizes the need for responsible Marine Resource Management; and

**WHEREAS**, the MPAs already approved during the North Central Coast MLPA process include an area of over 20 square miles within a ten mile radius of Arena Cove; and

**WHEREAS**, the City's main income for maintaining and operating the Arena Cove Harbor facilities comes from fishing activities; and

**WHEREAS**, it is in the best interests of the City of Point Arena, the Port of Arena Cove, local citizens, local fishermen and sea food gatherers, local tribal members, and all mariners in general: that no new MPAs should be added to the coast, estuaries or bays within a distance of 31 miles northward from the Point Arena SMR, and not closer than ten miles to any of the historic neighboring Ports of Albion River and Noyo River; and

**WHEREAS**, the California Marine Life Protection Act (MLPA) calls for the reexamination and redesign of California's Marine Protected Area (MPA) system to increase its coherence and effectiveness at protecting the state's marine life, habitat, and ecosystems; and

**WHEREAS**, it is consistent with the MLPA and good public policy to redesign California's MPA system in a manner that gives meaningful consideration to the sustainability of ecological, economic, cultural, and social systems; and

**WHEREAS**, North Coast fisheries are currently sustainable or rebuilding under existing regulations<sup>1</sup>; and

**WHEREAS**, recent scientific research has demonstrated that the California Current Ecosystem is one of the most conservatively managed ecosystems in the world<sup>2</sup>; and

**WHEREAS**, Mendocino County, Humboldt County and Del Norte County are classified as vulnerable to changes in fisheries management measures<sup>3</sup> due to factors such as high economic dependence on fishing, high community isolation, limited industry diversification, high unemployment, and high poverty rates; and

**WHEREAS**, the MLPA Initiative Regional Stakeholder Group unified during Round Three of the MLPA Initiative process to develop a consensus based MPA array (Unified MPA Array) that meets the goals of the MLPA while minimizing impacts to social, cultural, and economic systems; and

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<sup>1</sup> National Marine Fisheries Service. 2009. Our living oceans: report on the status of U.S. living marine resources, 6<sup>th</sup> edition. U.S. Dep. Commerce, NOAA Technical Memo. NMFS-F/SPO-80.

<sup>2</sup> Worm et al. 2009. Rebuilding Global Fisheries. *Science* 325: 578-585.

<sup>3</sup> Pacific Fishery Management Council and National Marine Fisheries Service. 2006. Proposed acceptable biological catch and optimum yield specifications and management measures for the 2007-2008 Pacific coast groundfish fishery, and Amendment 16-4: rebuilding plans for seven depleted Pacific coast groundfish species; final environmental impact statement including regulatory impact review and initial regulatory flexibility analysis. Pacific Fishery Management Council, Portland, Oregon, 2006.

## **RESOLUTION NO. 2010-13 Resolution of Support for the 3rd Round Unified MPA Array October 1, 2010**

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**WHEREAS**, we recognize that, due to significantly distinct ecological, social, cultural and economic conditions in the North Coast, the Unified MPA Array does not precisely meet all the guidelines established by the MLPA Initiative Science Advisory Team, yet represents an MPA network consistent with the spirit of those guidelines and the goals and elements identified in the MLPA legislation; and

**WHEREAS**, the long term success of MPAs will require acceptance by local communities; and although many community members do not believe any new MPAs are warranted, the Unified MPA Array represents a compromise acceptable to North Coast residents, including recreational fishermen, commercial fishermen and conservation advocates; and

**WHEREAS**, California Indian Tribes and Tribal Communities are traditional and active stewards of marine ecosystems, and their continued gathering and use of marine resources is an ongoing and essential part of their culture and survival.

**NOW, THEREFORE, BE IT RESOLVED** by the City of Point Arena that we strongly urge the Marine Life Protection Act Initiative Blue Ribbon Task Force and the California Fish and Game Commission to support and adopt the Unified MPA Array developed by the Regional Stakeholder Group during Round 3 of the North Coast MLPA Initiative process.

**BE IT FURTHER RESOLVED THAT** if the Blue Ribbon Task Force makes the decision to redesign the Unified MPA Array contrary to the recommendation of the City of Point Arena, then the redesign must be conducted in collaboration with North Coast Regional Stakeholders. Regional Stakeholders have worked for months to design a single cohesive array that incorporates the unique ecological, social, cultural and economic conditions of the North Coast within the framework of the statewide MLPA Initiative Guidelines and MLPA legislation. Because the alteration of any single element of the Unified MPA Array has the potential to undermine its cohesiveness, collaboration with Regional Stakeholders and local communities regarding any change to the Unified MPA Array is essential to retaining both its integrity and the support of local communities, factors that are vital to the long term success of the MPA system.

**BE IT FURTHER RESOLVED THAT** any approved MPA array design should allow traditional, non-commercial, gathering, subsistence, harvesting, ceremonial and stewardship activities by California Tribes and Tribal Communities.

**RESOLUTION NO. 2010-13 Resolution of Support for the 3rd Round  
Unified MPA Array October 1, 2010**

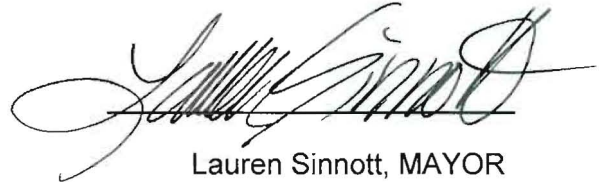
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**Passed and adopted this 1st day of October, 2010, by the following roll call vote:**

**AYES:** Councilmembers Ingham, Oropeza, Riboli, Sinnott

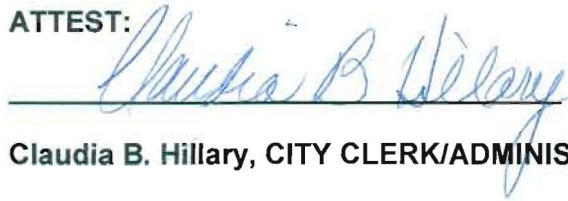
**NOES:**

**ABSENT:** Councilmember Riehl



Lauren Sinnott, MAYOR

**ATTEST:**



Claudia B. Hillary, CITY CLERK/ADMINISTRATOR

**From:** Smith-Hanes, Phillip  
**Sent:** Wed 10/6/2010 9:03 AM  
**To:** Ken Wiseman  
**Subject:** MLPA Initiative letter

Mr. Wiseman:

Thank you for your letter of October 1, informing me on the work of the North Coast Regional Stakeholder Group and inviting the County of Humboldt to provide feedback on the current MPA proposal as well as the MPA planning process. As I am sure you are aware, our County officials, staff and residents have been closely following this process and its socioeconomic ramifications for our County. Yesterday, the Board of Supervisors adopted a resolution (4-0, with Supervisor Jimmy Smith recused; copy attached) supporting the Unified Array developed by the Regional Stakeholder Group and urging the Blue Ribbon Task Force to adopt this proposal.

We are very proud of all the work that has been done to protect North Coast resources, both marine environments and their associated uses, and we look forward to welcoming the Blue Ribbon Task Force to its October 25-26 meeting here in Humboldt County. Please let me know if there's anything else I can do to assist MLPA Initiative staff; my contact information is also attached.

Phillip Smith-Hanes  
County Administrative Officer

**RESOLUTION NO. \_\_\_\_\_**

**BOARD OF SUPERVISORS  
OF THE  
COUNTY OF HUMBOLDT**

**A RESOLUTION TO SUPPORT THE  
UNIFIED MARINE PROTECTED AREA ARRAY**

**WHEREAS**, the California Marine Life Protection Act (MLPA) calls for the reexamination and redesign of California's Marine Protected Area (MPA) system to increase its coherence and effectiveness at protecting the state's marine life, habitat, and ecosystems; and

**WHEREAS**, it is consistent with the MLPA and good public policy to redesign California's MPA system in a manner that gives meaningful consideration to the sustainability of ecological, economic, cultural, and social systems; and

**WHEREAS**, North Coast fisheries are currently sustainable or rebuilding under existing regulations<sup>1</sup>; and

**WHEREAS**, recent scientific research has demonstrated that the California Current Ecosystem is one of the most conservatively managed ecosystems in the world<sup>2</sup>; and

**WHEREAS**, Mendocino County, Humboldt County and Del Norte County are classified as vulnerable to changes in fisheries management measures<sup>3</sup> due to factors such as high economic dependence on fishing, high community isolation, limited industry diversification, high unemployment, and high poverty rates; and

**WHEREAS**, the MLPA Initiative Regional Stakeholder Group unified during Round 3 of the MLPA Initiative process to develop a consensus based MPA array (Unified MPA Array) that meets the goals of the MLPA while minimizing impacts to social, cultural, and economic systems; and

**WHEREAS**, we recognize that, due to significantly distinct ecological, social, cultural and economic conditions in the North Coast, the Unified MPA Array does not precisely meet all the guidelines established by the MLPA Initiative Science Advisory Team, yet represents an MPA network consistent with the spirit of those guidelines and the goals and elements identified in the MLPA legislation; and

**WHEREAS**, the long term success of MPA's will require acceptance by local communities; and although many community members do not believe any new MPA's are

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<sup>1</sup> National Marine Fisheries Service. 2009. Our living oceans: report on the status of U.S. living marine resources, 6<sup>th</sup> edition. U.S. Dep. Commerce, NOAA Technical Memo. NMFS-F/SPO-80.

<sup>2</sup> Worm et al. 2009. Rebuilding Global Fisheries. Science 325: 578-585.

<sup>3</sup> Pacific Fishery Management Council and National Marine Fisheries Service. 2006. Proposed acceptable biological catch and optimum yield specifications and management measures for the 2007-2008 Pacific coast groundfish fishery, and Amendment 16-4: rebuilding plans for seven depleted Pacific coast groundfish species; final environmental impact statement including regulatory impact review and initial regulatory flexibility analysis. Pacific Fishery Management Council, Portland, Oregon, 2006.

warranted, the Unified MPA Array represents a compromise acceptable to North Coast residents, including recreational fishermen, commercial fishermen and conservation advocates; and

**WHEREAS**, California Tribes and Tribal Communities are traditional and active stewards of marine ecosystems, and their continued gathering and use of marine resources is an ongoing and essential part of their culture and survival,

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Humboldt that we strongly urge the Marine Life Protection Act Initiative Blue Ribbon Task Force and the California Fish and Game Commission to support and adopt the Unified MPA Array developed by the Regional Stakeholder Group during Round 3 of the North Coast MLPA Initiative process.

**BE IT FURTHER RESOLVED THAT** if the Blue Ribbon Task Force makes the decision to redesign the Unified MPA Array contrary to the recommendation of the Board of Supervisors of the County of Humboldt, then the redesign must be conducted in collaboration with North Coast Regional Stakeholders and communities. Regional Stakeholders have worked for months to design a single cohesive array that incorporates the unique ecological, social, cultural and economic conditions of the North Coast within the framework of the statewide MLPA Initiative Guidelines and MLPA legislation. Because the alteration of any single element of the Unified MPA Array has the potential to undermine its cohesiveness, collaboration with Regional Stakeholders and local communities regarding any change to the Unified MPA Array is essential to retaining both its integrity and the support of local communities, factors that are vital to the long term success of the MPA system.

**BE IT FURTHER RESOLVED THAT** any approved MPA array design will need to allow traditional, non-commercial, gathering, subsistence, harvesting, ceremonial and stewardship activities by California Tribes and Tribal Communities.

PASSED AND ADOPTED by the Board of Supervisors of the County of Humboldt,  
State of California, this fifth day of October, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Chair, Board of Supervisors

Attest:

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Clerk of the Board

**From:** Jack Likins  
**Sent:** Wednesday, October 06, 2010 10:36 AM  
**To:** MLPACComments  
**Subject:** NCRSG Unified Proposal - Attention Chair Gustafson

Dear Chair Gustafson,

I encourage you to accept the NCRSG Unified Proposal as is and without change. I know the NCRSG worked diligently to provide the BRTF with a proposal that meets science guidelines, protect habitat and, also importantly, is an array of MPAs that will have minimal impact on users. Those of us who love the ocean will do whatever it takes to protect its environment. We also want to continue our ability to enjoy the ocean's bounty of beauty and sea life. The NCRSG took all of the environmental and user factors into consideration and they should not be changed, in any way, by the BRTF.

Jack Likins